

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

DANIEL JOHN RILEY
Plaintiff,

v.

C.A. No. 12-175-ML

THOMAS COLANTUONO,
JOHN P. KACAVAS,
SETH R. AFRAME,
each in their individual capacity,

Defendants.

MEMORANDUM AND ORDER

MARY M. LISI, Chief Judge.

The plaintiff in this Bivens¹ action, Daniel John Riley ("Riley"), brought a *pro se* complaint against Assistant U.S. Attorney Seth R. Aframe ("Aframe"), Thomas Colantuono ("Colantuono") and John P. Kacavas ("Kacavas"), seeking damages for the loss of seven firearms that were forfeited in a civil action related to Riley's criminal conviction. See United State v. Gerhard, 615 F.3d 7 (1st Cir. 2010). Following a preliminary review of Riley's original complaint (Docket #1), this Court issued a Memorandum and Order (Docket # 20), dismissing all but Riley's civil conspiracy claim and allowing Riley to proceed on Counts I, II, and III of his amended complaint (Docket #18-1, # 21).

On August 14, 2012, the defendants filed a "Motion to Dismiss

¹Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2d 619) (1971).

for Failure to State a Claim or, in the Alternative, Motion for Summary Judgment.” (Docket # 26). Ordinarily, this Court does not accept motions that are stated in the alternative; however, in this case, the motion was filed in the District Court of the District of New Hampshire and Riley had already filed a timely objection before the motion was referred to Magistrate Judge Sullivan. In his objection, Riley conceded that he had no facts to support his claims against Colantuono and Kacavas and requested that the claims against them be dismissed. (Docket # 27 at 1-2).

The matter is now before the Court on a Report and Recommendation (“R&R”) issued by the Magistrate Judge on February 5, 2013 (Docket # 36). Objections to the R&R were due on February 22, 2013; none were received. Although the Court is under no obligation to review an R&R if such review has not been requested in a timely manner, Thomas v. Arn, 474 U.S. 140, 106 S.Ct. 466, 88 L.Ed.2d 435 (1985); United States v. Valencia-Copete, 792 F.2d 4 (1st Cir. 1986), the Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1) (2009). see also Fed. R. Civ. P. 72(b)(3).

The Court has reviewed the thorough and detailed R&R and agrees with the Magistrate Judge’s finding that Riley’s remaining claims against Aframe are barred by Aframe’s absolute prosecutorial immunity. Therefore, the Court adopts the recommendation that those

claims be dismissed pursuant to Fed. R. Civ. P. 12(b)(6). The Court further agrees with the Magistrate Judge's conclusion that, because Aframe's absolute immunity is dispositive of this case, there is no need to reconsider Riley's accusations against Aframe under the summary judgment standard.

For these reasons, the Court adopts the R&R with respect to the recommendation that the defendant's motion to dismiss the amended complaint be granted pursuant to Fed. R. Civ. P. 12(b)(6) based on Aframe's absolute immunity from suit. The Court further determines that dismissal of the case on that ground obviates the need for considering the defendants' alternative motion for summary judgment. The defendants' motion to dismiss the amended complaint is GRANTED. Riley's amended complaint is dismissed in its entirety and the clerk is directed to enter judgment in favor of the defendants.

SO ORDERED.

/s/ Mary M. Lisi

Mary M. Lisi
Chief United States District Judge

March 5, 2013